

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 10TH DAY OF AUGUST 2015/19TH SRAVANA, 1937

WP(C).No. 18984 of 2015 (W)

PETITIONER:

**RELIANCE JIO INFOCOMM LIMITED
CHANDRIKA CHAMBERS, VYTTILA.P.O, COCHIN-682019
REPRESENTED BY ITS, BUSINESS HEAD, MR.VINOD GIYAL.**

**BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURRYAN THOMAS**

RESPONDENTS:

- 1. THE DISTRICT COLLECTOR
COLLECTORATE, CIVIL STATION, ERNAKULAM-682030.**
- 2. THE DISTRICT TELECOM COMMITTEE,
REPRESENTED BY ITS CHAIRMAN, THE DISTRICT COLLECTOR
COLLECTORATE, CIVIL STATION, ERNAKULAM-682030.**
- 3. THE DEPARTMENT OF INFORMATION TECHNOLOGY,
GOVERNMENT OF KERALA
REPRESENTED BY ITS PRINCIPAL SECRETARY
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.**

R1 - 3 BY GOVERNMENT PLEADER SRI. MANOJ P. KUNJACHAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 TRUE COPY OF THE MINUTES OF MEETING HELD ON 27.05.2015 AT
THE CHAMBER OF DISTRICT COLLECTORATE, KAKKANAD IN
CONNECTION WITH ERECTION OF MOBILE TOWER.**
- EXT.P2 TRUE COPY OF THE G.O(MS)NO.25/2014/ITD DATED 02.08.2014,PASSED
BY THE INFORMATION TECHNOLOGY DEPARTMENT**
- EXT.P3 TRUE COPY OF THE ORDER G.O(MS)NO.31/2014/ITD DATED
05/11/2014,ISSUED BY THE GOVERNMENT**
- EXT.P4 TRUE COPY OF THE ORDER DATED 22.05.2015 IN APPEAL NO.1348 OF
2014,PASSED BY THE TRIBUNAL FOR LOCAL SELF GOVERNMENT
INSTITUTIONS.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P.(C) No. 18984 of 2015 (W)

Dated this the 10th day of August, 2015

J U D G M E N T

The petitioner is aggrieved with Ext.P1 order passed, insofar as the District Collector has interdicted any 'deemed permit', which according to the petitioner is permissible under the Municipality Act, 1994 (Kerala) (for brevity 'Act') and Municipality Building Rules, 1999 (Kerala) (for brevity 'Rules of 1999').

2. The specific contention taken by the learned counsel for the petitioner is that as per Rule 141(8) of the Rules of 1999, the Secretary of a Local Self Government Institution, if convinced of the boundaries and ownership of the plot, plans and drawings and genuineness of the certificates, is mandated to issue permit, not later than 30 days from the date of receipt of the application. Read with the 3rd proviso to Rule 143, it is submitted that there would

be a 'deemed permit' issued, if such construction has not been made, since the proviso specifically excludes such construction made after the 30 days' period, to be one not required in regulation if such construction has been made in accordance with the Rules.

3. The learned counsel also would take me through **Wireless T.T. Info Services Ltd. v. S.I. of Police - 2011 (2) KLT 820** where the specific issue was considered; bringing in a further stipulation as to moving the Council under Section 392 of the Act, before there could be a claim raised of a 'deemed permit'.

4. The District Collector has filed an affidavit, in which it has been specifically pointed out that Ext.P1 is issued in public interest and is only to ensure that no mobile tower construction is carried on without proper permits and verification of the documents, since that would later lead to a situation where no regularisation is also not required.

5. The issue no longer is res integra since the matter has been considered comprehensively by a Division Bench of this Court in the afore cited decision. The Division Bench refused to accept the contention of the petitioners therein that on expiry of 30 days, from which an application is filed under Rule 141, there would be a 'deemed permit'. The contention of the Corporation with respect to Section 392 of the Act was noticed and it was found that there could be no 'deemed permit' only by virtue of Section 141(8) and the 3rd proviso to Section 143. A deemed permit can only be under Section 392 and if an application filed under Rule 141(8) is not considered within 30 days, a telecom operator would have the remedy to approach the Council under Section 392 of the Act. Only if that is also not considered within 30 days of filing, then alone there could be a claim made of a 'deemed permit', was the finding of the Division Bench. What is allowed by the Statute and the Rules framed thereunder, as declared in the judgment of this Court,

cannot be taken away by the District Collector even on the premise of a public interest.

6. Further, it is also to be noticed that even if the 3rd proviso does not require any regularisation, it is specifically provided that regularisation would be automatic, only if the construction complies with the Rules. Hence, any construction made of a mobile tower without complying with the Rules, would be liable to be demolished by the respondent authorities.

7. In such circumstance, the stipulation insofar as there being no deemed license at all, as per Ext.P1, is set aside. However, it is to be noticed that the affidavit of the District Collector itself notices that directions are issued to all local bodies to ensure consideration and disposal of all applications for installation of mobile towers within 30 days of receipt of the application. It is also to be noticed that, even if that is not considered, there should be further application to the Council under Section 392 of the Act and

the Council also could direct verification of the documents as provided in G.O.(MS) No.14/2014/TD.

In such circumstance, while setting aside the stipulation made by the Chairman of the District Telecom Committee that no deemed permits shall be considered, the Writ petition would stand disposed of with the observations herein above.

Sd/-
K.VINOD CHANDRAN,
JUDGE